

III. REMARKS

Claims 1-3, 8-11, 14-22, 25-29 and 34 are pending in this application. Claims 1, 11, 14, 15, 25 and 34 are amended. Claims 4-7, 12-13, 23-24 and 30-32 are canceled. Claims 25-34 are rejected under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter. Claims 1-21, 23-28 and 30-34 are rejected under 35 USC 103(a) as allegedly being unpatentable over Brown et al. (US2002/0065766) ("Brown") in view of Gutterman et al. (US5297031) ("Gutterman"). Claims 14, 16-21 and 23-24 are rejected under 35 USC 103(a) as allegedly being unpatentable over Brown in view of Gutterman further in view of Madoff et al. (US2002/0019795) ("Madoff"). Claims 22 and 29 are rejected under 35 USC 103(a) as allegedly being unpatentable over Brown in view of Gutterman in view of Madoff further in view of Sheynblat et al. (US6839021) ("Sheynblat"). Claims 1-21, 23-28 and 30-34 are rejected under 35 USC 103(a) as allegedly being unpatentable over Serkin et al. (US2002/0161687) ("Serkin") in view of Sanhu (US6347307) ("Sanhu") further in view of Gutterman. Claims 14, 16-21 and 23-24 are rejected under 35 USC 103(a) as allegedly being unpatentable over Serkin in view of Sanhu in view of Gutterman further in view of Madoff. Claims 22 and 29 are rejected under 35 USC 103(a) as allegedly being unpatentable over Serkin in view of Sanhu in view of Gutterman in view of Madoff further in view of Sheynblat. Reconsideration in view of the following remarks is respectfully requested.

Applicant does not acquiesce in the correctness of the rejections and reserves the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicant reserves the right to pursue the full scope of the subject

matter of the claims in a subsequent patent application that claims priority to the instant application.

A. REJECTION OF CLAIMS 25-34 UNDER 35 USC 101

In the Office Action, claims 25-34 are rejected under 35 USC 101 alleging Applicant's invention is directed to non-statutory subject matter. Office Action pp. 4-5.

Without conceding the correctness of the Office's interpretation, and to facilitate early allowance of the pending claims, claim 25 has been amended to recite, *inter alia*: broadcasting a price quote from a market maker over the network using at least one computing device at a beginning of a current trading interval; distributing the price quote over a plurality of network nodes within the network using at least one computing device" and claim 34 has been amended to recite, *inter alia*: "broadcasting over the network using at least one computing device a price quote at a beginning of a trading interval; receiving an order over the network using at least one computing device, wherein the order includes a time stamp received from a network agent that precedes a time the order is received and is subsequent to the order being placed by a participant." Support for these amendments may be found in the specification, for example, at page 15 line 10 through page 16 line 6.

Accordingly, Applicant asserts that the bases for the Office's rejections have been obviated and respectfully request withdrawal of the rejection.

B. REJECTION OF CLAIMS 1-34 UNDER 35 USC 103(a)

In the Office Action, claims 1-21, 23-28 and 30-34 are rejected under 35 USC 103(a) as allegedly being unpatentable over Brown in view of Gutterman; claims 14, 16-21 and 23-24 are rejected under 35 USC 103(a) as allegedly being unpatentable over Brown in view of Gutterman further in view of Madoff; and claims 22 and 29 are rejected under 35 USC 103(a) as allegedly being unpatentable over Brown in view of Gutterman in view of Madoff further in view of Sheynblat.

Applicant continues to assert that Applicant's invention was prior to the effective date of Brown based upon the proof previously filed with the Office. Applicant disagrees with the Office's "Response to Arguments" concerning its rejection of Applicant's proof. Office Action pp. 2-4.

Applicant directs the Office's attention to Mr. Sturman's Declaration dated 04-17-2009 and filed with the Office on 04-22-2009. In his Declaration, Mr. Sturman states, *inter alia*, "The invention was workable as of 03-11-2000 as stated in answer to Question 1 of the Disclosure of Invention (Exh. "A")." Declaration of Daniel Sturman; page 2; 04-17-2009.

While Applicant does not acquiesce to any of the Office's assertions concerning Applicant's offer of proof, it is clear the Office has not taken this averment by Mr. Sturman into consideration.

As Applicant's invention was workable on 03-11-2000 - prior to the effective date of Brown with a provisional application filing date of 09-05-2000 – Applicant has established reduction of practice prior to the earliest effective filing date of Brown. Therefore, Brown should be excluded as prior art. Gutterman, Madoff, and Sheynblat

do not teach or suggest each and every feature of Applicant's invention whether viewed alone or in any combination.

Alternatively, Brown does not teach or suggest each and every feature of claim 1 (and similarly claims 11, 15, 25, and 34), as amended. The Office cites Brown paragraphs [0015] and [0044] through [0067] in support of its rejection of claims 4 through 7 – the subject matter now incorporated into claim 1 (and similarly claims 11, 15, 25, and 34), as amended. Brown does not teach or suggest these features. Gutterman does not cure the deficiencies.

For example, Brown discloses, *inter alia*, “If the time has expired, then the next step is to go to the Create Phase (step S-1f). Otherwise, if the time has not expired, the bid object is transmitted back to the marketspace module and a new object is pulled from the marketplace module.” Brown [0065].

Brown does not teach or suggest “qualifies orders by comparing the time stamp for each order with the trading cut-off time for the current trading interval,” “defines an effective endpoint for each trading interval based on a computational time of the market maker,” and “qualifies orders by comparing a time the order was received by the market maker with the effective endpoint of the current trading interval.”

Therefore, Applicant submits that claim 1 (and similarly claims 11, 15, 25, and 34) is patentable over Brown and Gutterman whether viewed alone or in any combination.

With respect to the dependent claims, Applicant herein incorporates the arguments presented above with respect to the independent claims from which the claims depend. Furthermore, Applicant submits that all dependent claims are allowable

based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicant respectfully requests withdrawal of this rejection.

C. REJECTION OF CLAIMS 1-21, 23-28 and 30-34 UNDER 35 USC 103(a)

In the Office Action, claims 1-21, 23-28 and 30-34 are rejected under 35 USC 103(a) as allegedly being unpatentable over Serkin in view of Sanhu further in view of Gutterman. With respect to claim 1 (and similarly 11, 15, 25, and 34), as amended, Serkin does not teach or suggest each and every feature of this claim and Sanhu and Gutterman do not cure the deficiencies.

Claim 1 (and similarly 11, 15, 25 and 34) has been amended to recite: "a trading system that sets prices and processes orders for each call auction, wherein the trading system defines a trading cut-off time during each trading interval; and a time analysis system that examines each order submitted during a current trading interval to determine if the submitted order qualifies for the call auction at the end of the current trading interval based on the time stamp associated with the submitted order, wherein the time analysis system qualifies orders by comparing the time stamp for each order with the trading cut-off time for the current trading interval, wherein the trading system defines an effective endpoint for each trading interval based on a computational time of the market maker, and wherein the time analysis system further qualifies orders by comparing a time the order was received by the market maker with the effective endpoint of the current trading interval." The amendments to claim 1 incorporate the subject matter of claims 4-7 herein canceled; claim 11 incorporate the subject matter of

claims 12-13 herein canceled; claim 15 incorporate the subject matter of claims 23-24, and 25 incorporate the subject matter of claims 30-32. Support for these amendments may be found in the specification, for example, at page 12 line 4 through page 14 line 10.

The Office cites Serkin paragraphs [0029] and [0049] in support of its rejection. Serkin does not teach or suggest these features. Sanhu and Gutterman do not cure the deficiencies.

For example, Serkin discloses, *inter alia*, “the order collector process 25 receives orders/quotes and time stamps 42 each order/quote upon receipt. This time stamp determines the order’s/quote’s ranking for automated execution.” Serkin [0029]. Serkin continues, *inter alia*, “The order execution/routing manager 26d will execute non-directed orders against Quoting Market Participant’s quotes/orders against Quoting Market Participant’s quotes/orders based on price/time priority.” Serkin [0049].

Serkin does not teach or suggest “qualifies orders by comparing the time stamp for each order with the trading cut-off time for the current trading interval,” “defines an effective endpoint for each trading interval based on a computational time of the market maker,” and “qualifies orders by comparing a time the order was received by the market maker with the effective endpoint of the current trading interval.”

Therefore, Applicant submits that claim 1 (and similarly claims 11, 15, 25, and 34) is patentable over Serkin, Sanhu and Gutterman whether viewed alone or in any combination.

With respect to the dependent claims, Applicant herein incorporates the arguments presented above with respect to the independent claims from which the

claims depend. Furthermore, Applicant submits that all dependent claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicant respectfully requests withdrawal of this rejection.

D. REJECTION OF CLAIMS 14, 16-22, 23-24, and 29 UNDER 35 USC 103(a)

In the Office Action, claims 14, 16-21 and 23-24 are rejected under 35 USC 103(a) as allegedly being unpatentable over Serkin in view of Sanhu in view of Gutterman further in view of Madoff; and claims 22 and 29 are rejected under 35 USC 103(a) as allegedly being unpatentable over Serkin in view of Sanhu in view of Gutterman in view of Madoff further in view of Sheynblat.

For the reasons provided above with respect to the 103(a) rejections over Serkin, Sanhu and Gutterman and for their own unique features, Serkin, Sanhu, Gutterman, Madoff, and Sheynblat do not teach or suggest each and every feature of claims 14, 16-22, 23-24 and 29 of Applicant's invention whether viewed alone or in any combination. Therefore, Applicant respectfully requests withdrawal of this rejection.

IV. CONCLUSION

In addition to the above arguments, Applicant submits that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicant does not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicant does not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicant reserves the right to present such arguments in a later response should one be necessary.

In light of the above, Applicant respectfully submits that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the number listed below.

Respectfully submitted,

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